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Full Disclosure of Consumer Savings Information

VANCE HARTKE*

INTRODUCTION

Americans place more than \$78 billion of disposable income into savings accounts each year.¹ This is money saved for emergencies, for children's education, for a new home, for a long awaited vacation, and for many other purposes. Despite the fact that savings are so important to so many of us, few Americans realize the importance of the decision to place their money into a savings institution.

Just as an individual shops for the best buy when purchasing a new car or a washing machine, he should also shop when opening a savings account. What is savings to him is income for a savings institution—income which is used to produce profits. In the same way that stores offer different terms for washing machines, savings institutions offer different terms for money entrusted to them.

* United States Senator from Indiana. The author would like to express his appreciation to his Legislative Assistant, Howard Marlowe, for his invaluable assistance in preparing this article.

1. Federal Reserve Board Report on the Flow of Funds Unadjusted for the Fourth Quarter of 1972 and Preliminary (1973).

Unfortunately, the consumer does not have enough information at his disposal before he opens an account. He is confronted by confusing claims in newspaper advertisements and a variety of technical information which is difficult to understand. There are more than fifty-four different methods of earnings computation in use today.² They include LIFO, FIFO, low balances, day-of-deposit to day-of-withdrawal accounts, daily interest and grace days, combined with the infinite possibilities of compounding which include semi-annually, quarterly, daily, and continuously.

Differences in earnings rates and methods of computation are important to the average consumer. Mere variations in the method of calculating earnings can result in a monetary difference of as much as one hundred fifty percent over a six-month period. Yet, I doubt that most of us know precisely which method of earnings computation our savings institution uses. We may know that it compounds and credits earnings quarterly, but do we know whether it bases its computations on the lowest balance during the quarter, or on some other system which emphasizes the beginning balance during the quarter or first deposits during the quarter? We may know that our savings institution credits earnings from the first day of the month even though we deposit money on the tenth day, but do we know if there are any penalties for excessive withdrawals during the quarter? At some time during our lives, each of us must make at least one major withdrawal from our savings accounts, but do we honestly know what is the best month(or day) for such a withdrawal?

This is all complicated information, but it is, nevertheless, important for consumers to have it. A withdrawal made at the wrong time may well mean a serious loss of earnings. Money placed with one institution may not earn as much as money placed with another. If we work diligently for our money, then we must invest it wisely. Opening a savings account is the same as investing our money.

Consumers have both a need to know this information and a right to know it. This right to basic knowledge was first enunciated by President Kennedy in 1962.³ Many years before, however, it was recognized in the Truth in Securities Act of 1933, which established the Securities and Exchange Commission⁴ and in such more recent

2. *Maybe We Need Truth-in-Savings, Too*, Changing Times, Feb. 1971, at 7.

3. President's Message On Consumers' Protection and Interest Program, H.R. Doc. No. 364, 87th Cong., 2d Sess. (1962).

4. See generally P. Douglas, *In Our Time* (1968).

legislation as the Consumer Credit Protection Act (Truth in Lending Act)⁵ and the Fair Packaging and Labeling Act (Truth in Packaging Act.)⁶ All of these laws require standardization of terminology to improve communication with consumers.

THE TRUTH IN LENDING ACT

The Truth in Lending Act of 1967 provides valuable insight into the need for consumer disclosure information.⁷ The basic purpose of that legislation is to provide full disclosure of credit charges to the American consumer. The main thrust is not at regulating the credit industry, but rather at letting the consumer decide for himself whether the credit charge is reasonable. By enabling the consumer to compare the cost of credit among different creditors, Truth in Lending seeks to promote the wiser use of consumer credit.⁸

The Senate debate on Truth in Lending was marked by little opposition. The only doubts about the bill were raised by Senator Thomas McIntyre of New Hampshire.⁹ He was concerned about

5. 15 U.S.C. § 1601-13, 1631-41, 1661-65, 1671-77 and 18 U.S.C. § 891-896.

6. 15 U.S.C. § 1451-61.

7. 113 Cong. Rec. 18400 (1967) (discussion by Senator Proxmire of Wisconsin on the need for Truth in Lending).

8. *Id.* at 18413.

9. *Id.*,

Truth in Lending was designed to improve competition among all classes of lenders. Everybody is in favor of improving competition, of course. But it seems to me that any improvement in competition, and I refer specifically to competition in vendor credit, will place the national chain stores, the great mail order houses, and the large metropolitan retailers, in a substantially advantageous position over the small neighborhood or country store, with its limited access to credit facilities and its inability to use automated data processing techniques for its accounts receivable.

Perhaps, from the viewpoint of the consumer, such competition will continue to be desirable. But, Mr. President, we are legislating for an entire Nation, not just a nation of consumers, but a nation of shopkeepers, of small businessmen, of corner groceries and small automobile dealers. And I believe that the present bill may tend to injure these men and women.

Another objection which I have to this bill, as well as to its predecessors, goes to the appropriateness of congressional action in what has traditionally been an area subject to State regulation. Practically every State in the Union already has consumer credit legislation on the books, but in one fell swoop the Congress is preparing to enter, and practically preempt the field. . . .

the possible adverse effect which Truth in Lending would have on small businesses which compete with larger enterprises. He also questioned the appropriateness of congressional action in a field which traditionally had been subject only to state regulation. In the final analysis, Senator McIntyre said that the bill gave consumers a meaningful way of comparing the entire cost of credit.

THE SAVINGS EXPERIENCE

A consumer depositor meets several problems, not the least of which is his lack of knowledge about savings institutions and their practices. This rather complete ignorance sets the savings experience apart from the Truth in Lending experience described above. In the latter, many consumers were aware of their ignorance; but this awareness does not pertain to savings deposits.

Most consumers believe that a savings institution which indicates that it is offering an earnings return of five percent compounded and credited quarterly has provided them with as much information as they need to know and can possibly use to make a rational choice among savings alternatives. Given a choice between that institution and one which offers an earnings rate of four percent compounded and credited quarterly, the decision would seem to be obvious. But given a choice between two institutions which offer the same five percent rate, the consumer will probably determine that the placement of his savings in either institution will be equally beneficial to him.

It is at this point that the consumer's ignorance begins to hurt him. There are far too many different methods of calculating earnings to allow the assumption that even two identical earnings rates will yield the same earnings over an equal period of time. In addition,

I might point out that my preference for State, as opposed to Federal legislation in this area is not based upon any reliance on the old cliché of 'States rights.' Rather, it is based upon two practical results of the historic regulation of consumer credit by the States themselves. First, the States have already created and funded the administrative machinery needed to enforce and administer consumer credit laws. The Federal government has no such administrative machinery, and its creation would add to the taxpayers expenses only to duplicate existing State machinery.

In addition, consumer credit legislation is intertwined with a whole network of related State legislation. The pending bill deals only with disclosure, and, although we have tried our best to foresee any conflicts with other State laws, we do not know how well we have succeeded. What, for example, will be the effect of this bill on existing State usury laws? We hope that disclosure under this bill will have no relevance to State usury laws, but only State legislative, and not the Congress, is competent to dovetail the two different kinds of regulation

there is no standardization of even the most basic of terms. Thus, what is a year for one institution will be more, or less, than a year of another.

Some savings institutions use a three hundred sixty day year, and others use a three hundred sixty-five or three hundred sixty-six day year. Quarterly compounding for one institution may mean one-fourth the annual earnings rate while for another it may be based on the number of actual days in the quarter divided by the number of actual days in the year. Furthermore, savings institutions use different factor tables resulting in different earnings rates.

One need only look at the daily newspaper to know that savings institutions provide potential depositors with varying amounts of information. Some advertise only their annual percentage; others advertise only their annual percentage yield (which reflects the effect of compound interest); and still others use both rates. Many institutions do not advertise how often earnings are compounded or credited, and still others use misleading terms such as "retro-active interest is better than daily interest."

All of these institutions are operating within the law, but existing Federal regulatory institutions merely establish the parameters within which savings institutions may operate. They have yet to exercise their statutory authority to standardize and define terms so that the consumer can be informed.

A definitive study of this subject has turned up the information that many savings institutions are unable to describe adequately their own methods of calculating earnings.¹⁰ That same study demonstrated that it was possible for two institutions with apparently comparable earnings rates to vary as much as one hundred seventy-one percent in the amount of earnings paid on a specified six-month savings program.

Although that study made use of forty different methods of earnings calculation, the following exhibits show the variations which can occur using only seven widely used methods of calculation:

10. J. Pinson, *Truth in Savings*, 1970 (unpublished thesis at Kansas State University).

EXHIBIT A

Date	Withdrawal	Deposit	Balance (without interest)
Jan. 1, 1970			\$1,000
Jan. 10, 1970		\$2,000	3,000
Feb. 6, 1970		1,000	4,000
Mar. 5, 1970	\$1,000		3,000
Mar. 20, 1970	500		2,500
Mar. 30, 1970	500		2,000
Apr. 1, 1970			2,000
July 1, 1970			2,000

EXHIBIT B

(Annual Percentage Rate of Six Percent)

System	Yield
Low Balance: Compounded and credited semiannually	\$29.75
Low Balance: Compounded quarterly and credited semiannually	29.97
Low Balance: Compounded and credited quarterly	44.93
First in-first out applied to beginning balance: Compounded and credited quarterly	52.44
First in-first out applied to first deposits: Compounded and credited quarterly	53.93
Last in-first out: Compounded and credited quarterly	58.44
Day of deposit to day of withdrawal: Compounded and credited quarterly	75.30

Most savings institutions seek to attract new depositors through newspaper and other mass media advertisements. A recent study, however, found that a substantial proportion of those advertisements were uninformative.¹¹ The study also showed that the lack of information in advertisements is not necessarily a function of the ad. Twelve percent of the small ads included in the study were completely informative and twenty-two percent of the ads between one-half and two full pages in size gave almost no facts at all.

The ultimate problem faced by the consumer depositor is the annual report he receives from his savings institution which reports the amount of earnings his account has accumulated during the previous calendar year. Because of the lack of information of methods of earnings calculations and rates of earnings, it is impossible for him to check the accuracy of the savings institution's calculations.

11. 117 Cong. Rec. 22336-38 (1971) (Study conducted by Diana Osbaldiston).

Each of us makes periodic checks of our checkbook balance. If there is an error, we usually find it to be in our own calculations. Occasionally, however, banks do make errors. These can be determined for checking accounts because the calculations involved are relatively simple; but this is far from the case with most savings accounts. So long as the principal remains untouched throughout a full earnings period, there is little difficulty in checking a savings institution's calculations. But if the depositor adds or subtracts principal during the earnings period, checking the earnings calculation is made impossible.

CONSUMER SAVINGS INFORMATION PROPOSAL

Each of these problem areas for consumer depositors can be corrected so that he has adequate information to assist him in (1) making a rational choice among various savings alternatives, and (2) checking a savings institution's earnings calculations. With this in mind, I joined with Congressman William Roy of Kansas in 1971 and again last year in sponsoring the Consumer Savings Disclosure Act—more popularly known as Truth in Savings.¹²

One of the primary objectives of this legislation is to clear up ambiguities of terminology. Use of such terms as "annual percentage rate" and "annual percentage yield" is not uncommon in many newspaper advertisements.¹³

The term annual percentage rate means the nominal rate used to compute annual earnings. The use of this term assists the consumer in understanding the concept of rates as applied both to savings and to credit. Credit and savings are mirror images of each other. The credit consumer borrows from the savings institution; the savings institution borrows from the consumer. The use of common terminology in both credit and savings transactions is, therefore, desirable.

Annual percentage yield, on the other hand, includes the resulting effect of the compounding of earnings. Whether earnings are compounded on a daily, monthly, quarterly or semiannual basis will affect percentage yield measurably. In the hypothetical

12. S. 1052, 93d Cong., 1st Sess. (1973).

13. See e.g., Washington Post, Nov. 20, 1973 at p. D8; New York Times, Nov. 19, 1973 at p. 29.

account I cited on page six, earnings compounded and credited semi-annually at an annual rate of six percent amount to \$29.75, while earnings compounded quarterly and credited semiannually at an annual rate of six percent amount to \$29.97. This means that the annual percentage yield for the two types of accounts is different, even though the annual percentage rate is the same.

The Hartke-Roy Consumer Savings Disclosure Act makes it a requirement that each savings institution disclose to potential depositors its annual percentage rate and its annual percentage yield. In addition, it must disclose the minimum length of time a sum of money must remain on deposit to earn interest at the annual rate.

There are two other essential pieces of information which must also be disclosed according to the requirements of the Truth in Savings legislation. The first is the periodic percentage rate. In the equation:

$$E = prt$$

the "E" factor is the earnings that will result from the deposit and the "t" factor is the time during which the funds are actually on deposit. The "r" factor is the periodic percentage rate—the rate which is actually applied in figuring earnings for each time period. If earnings are computed each quarter, for example, the periodic rate is the actual rate which the savings institution uses to calculate interest for that quarter. (For most institutions, the periodic rate in this example would be one-fourth of the annual percentage rate.)

This periodic rate has been used in the credit industry for years. An examination of a department store credit account, for example, will disclose that the store states the monthly percentage rate which it applied to the unpaid balance on the account. This monthly rate is the periodic percentage rate.

The second piece of essential information which must also be supplied to consumers is the method by which the balance upon which earnings are calculated is determined. In the equation cited above, this represents the "p" factor. Which balance is used in computing earnings is crucial to the consumer. Will it be the low balance, the average balance, the "daily" balance, or some other balance? This information is vital to consumers; yet, there are so many different methods of computing earnings that he cannot be expected to know this fact without being told by the savings institution.

Some savings institutions make provision for grace days. Under this option, a consumer may place a deposit in the institution after the first of the month and yet that deposit will accumulate¹⁴ earnings as if it had been deposited on the first of the month. Other institutions impose a charge on excessive withdrawals from an account. My bill requires that this type of information must also be disclosed to the potential depositor.

To minimize the possibility for error and misunderstanding, my proposal requires that savings institutions make the following annual disclosures to their depositors: the amount of earnings payable; the annual percentage rate; the periodic percentage rate; the principal balance to which the annual percentage rate was applied and the method by which that balance was computed; and a detailed explanation of any differences between the amount of earnings payable and the maximum amount of earnings that would have been payable had the terms and conditions for such maximum payment been met.

Finally, to supplement the disclosure requirements of my bill, basic requirements are also established for advertising. All advertisements relating to earnings payable on an individual savings deposit must state with equal prominence the annual percentage rate and the annual percentage yield. Ads must also state any minimum amount of deposit and time requirements. No advertisements will be permitted to include any indication of percentage rate or percentage yield which is based on a period in excess of one year or on the effect of any grace period. In this way, the consumer will be able to make effective comparisons among various savings institution advertisements.

Nothing could be clearer than the need for this information to be in the hands of consumers. The American public deserves to have all the facts needed to make a prudent choice among savings institutions. The "Truth in Savings Act" puts such information at their disposal. It is based on the premise that the best-protected consumer is the best informed consumer. In no way does it tell financial institutions what they should pay or how they should pay it. They are free to compete with each other as they choose. It merely provides that financial institutions tell in clear and meaningful language what they are doing for the depositor.

14. See e.g., Washington Post, Dec. 9, 1973 at p. F3.

There are certain very clear comparisons between Truth in Savings and the Truth in Lending Act.¹⁵ The terminology used throughout both proposals is highly similar. In many ways, Truth in Savings is a mirror image of Truth in Lending. The consumer placing his money in a savings institution receives earnings in return for his placement; the consumer who borrows money pays a finance charge which represents the credit agency's earnings. Both consumers need to know the relative costs or benefits which result from dealing with various institutions. Both are confronted by annual percentage yields. Since Congress has recognized the need for legislation to clear up the confusion on the credit side of the transaction, it should also act to clear up confusion on the savings side.

In discussing the "Truth in Savings" proposal with savings institutions, I have been pleased with their support of its objectives. They are just as anxious as I am to eliminate any sources of misunderstanding for consumers. What is most important is that we develop a national concern for the problems of consumer depositors, and then translate that concern into positive legislative action.

Some have suggested that the objectives of the Truth in Savings Act can be achieved more easily by Federal regulation, rather than by legislation. There are, however, drawbacks to this approach.

Not all savings institutions are under Federal regulatory au-

15. Comparison of Truth in Lending and Truth in Savings, Table following in footnote:

Truth in Lending Act (Sections of Reg. Z)	Term	Truth in Savings Act (Sections of S. 1052 or H.R. 4985)
§ 226.7 (b) (4)	Finance Charge/Earnings	§ 3 (a) (4); 6 (b) (1)
§ 226.7 (b) (6)	Annual Percentage Rate	§ 4 (b); 6 (a) (1); 6 (b) (2)
§ 226.7 (b) (9)	Time allowance	§ 6 (a) (2)
§ 226.7 (b) (5)	Periodic Percentage Rate	§ 4 (a); 6 (a) (4); 6 (b) (3)
N/A; no compounding involved	Annual Percentage Yield	§ 4 (c); 6 (a) (3)
N/A; see above	Number of time each year earnings are compounded	§ 6 (a) (5)
N/A; see above	Other factors affecting yield	§ 6 (b) (6)
§ 226.7 (b) (8)	Method used to determine balance to which rate is applied	§ 6 (a) (4); 6 (b) (4)
§ 226.7 (b) (9)	Dates earnings payable or finance charge assessed	§ 6 (a) (6)
§ 226.7 (b) (4)	Other charges	§ 6 (a) (7); 6 (b) (5)

thority. The Federal regulatory agencies are: The Federal Reserve Board, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation. Although the latter three agencies have power over state financial institutions, not all state institutions are covered.¹⁶

The corollary problem to this is that, for any Federal action to be effective against all those institutions under Federal regulatory authority, each of the Federal regulatory agencies must act in concert. At the present time, there is evidence that only the Federal Deposit Insurance Corporation has recognized the possible need for such administrative regulation.

In a September 15, 1971, letter to Senator John Sparkman (Chairman of the Senate Banking, Housing and Urban Affairs Committee), the Chairman of the FDIC, Frank Wille, made the following statement:

The Corporation, of course, favors the full and accurate disclosure to depositors of the applicable rates of interest and of the other terms and conditions governing their deposits. We believe, however, that the Corporation's Board of Directors, the Board of Governors of the Federal Reserve System, and the Federal Home Loan Bank Board presently have statutory authority sufficiently broad to enable them to adopt any regulations necessary to accomplish the bill's objectives with respect to insured banks and savings and loan associations.

Since the writing of that letter, no action has been taken by the regulatory agencies to assert this statutory jurisdiction. Either the FDIC determined that it did not have the authority to propose regulations, or else it decided that such regulations were not needed. It seems apparent that the use of regulations to achieve Truth in Savings is a hopeless cause.

RESPONSE OF THE FEDERAL AGENCIES

Most of the Federal agencies responsible for the regulation of financial institutions made formal comments on the Trust in

16. According to the Federal Home Loan Bank Board there are 1,036 non-Federally regulated or non-Federally insured savings institutions in the United States. These include some commercial banks, mutual savings banks, savings and loan associations and other types of institutions.

Savings Act (S. 1052) during Senate hearings held in 1973.¹⁷

The Federal Home Loan Bank Board cited the fact that newspaper advertisements for savings accounts are often confusing, making comparison shopping among savings institutions difficult.¹⁸ The Board agreed that consumers should be informed of the annual percentage yield, but thought other information required to be disclosed by the bill would be too confusing.¹⁹

The Federal Reserve Board stated that it "would support enactment of legislation along the line of S. 1052."²⁰ However, contrary to the position of the Federal Home Loan Bank Board, the Reserve Board thought that the annual percentage yield, rather than the annual percentage rate, should be the only information disclosed to the consumer. Both agencies thought that the responsibility for implementing Truth in Savings ought to rest solely with the Federal agencies which regulate savings institutions, rather than including the Federal Trade Commission as proposed in S. 1052.

The Federal Deposit Insurance Corporation stated that it preferred a regulatory approach to the statutory method embodied in S. 1052.²¹ The National Credit Union Administration cited its support for the objectives of the legislation but noted the difficulties which credit unions would have complying with it.²²

Although the Treasury Department did not enter a comment on S. 1052 during the Senate hearings, it has since made its position quite clear. On October 11, 1973, the Treasury sent to Congress the Financial Institutions Act of 1973.²³ That bill includes a Truth in Savings proposal.²⁴

The Treasury Department's proposal eliminates the requirement of S. 1052 that the annual percentage yield and the periodic percentage rate be disclosed to depositors at the time accounts are opened.²⁵ It also eliminates the requirement that the periodic percentage rate and the principal balance to which that rate was ap-

17. *Hearings Before the Subcomm. on Consumer Credit of the Senate Comm. on Banking, Housing, and Urban Affairs*, 93d Cong., 1st Sess. (1973) (hereinafter cited as *1973 Hearings*).

18. *Id.* at 82.

19. *Id.* at 84.

20. *Id.* at 55.

21. *Id.* at 48.

22. *Id.* at 52, and see comments of the Credit Union National Association, *infra*.

23. S. 2591, 93d Cong., 1st Sess. (1973) (Introduced by Senator Sparkman of Alabama).

24. *Id.* at § 106.

25. See S. 1052, n. 13, *supra* at § 6(a).

plied be disclosed to depositors annually and at any time an earnings report is made to the depositor.²⁶ It retains the advertising requirements of S. 1052²⁷ and most of the administrative enforcement provisions of that bill,²⁸ but it eliminates any role for the Federal Trade Commission.

This commitment to Truth in Savings by the Treasury Department and by almost all other Federal agencies which regulate financial institutions demonstrates the need for disclosure to consumer depositors. What all these agencies have neglected, however, is the need to provide depositors with enough information to verify the earnings calculations of savings institutions.

Without access to information about the periodic percentage rate, it will be impossible for a depositor to know whether the bank has made an accurate calculation of his earnings. The need for this information was highlighted during testimony before the Subcommittee on Consumer Credit presented by Professor Richard L.D. Morse of the Department of Family Economics at Kansas State University.²⁹ Dr. Morse entered into the hearing record by reference a series of correspondence which he had with the New York Bank for Savings.³⁰ That correspondence recited the fact that Dr. Morse opened two identical savings accounts at that institution. A deposit of \$500 was made in each account on April 16th. In January of the following year, earnings of \$18.96 were entered by the bank on the first account and \$22.04 on the second account. Neither account had any activity in the interim. The annual rate of earnings on both accounts was listed as five and three-quarters percent. The only difference was that the earnings on the first account were credited as of January 15th, and the earnings on the second account were credited as of January 20th. As these were accounts where earnings were to be compounded and credited quarterly, rather than daily, it was clear that an error had been made, and the bank so acknowledged that it had erred.

Dr. Morse was able to discover the error because he had two

26. *Id.* at § 6(b).

27. *Id.* at § 7. Note that this section merely *permits* the disclosure of the annual percentage yield rather than requiring it as under S. 1052.

28. *Id.* at § 8.

29. 1973 *Hearings*, *supra* n. 16 at 143.

30. *Id.* at 414-16.

identical accounts in the same savings institution. Had he opened only the first account, he would have received an earnings report of \$18.96 and would not have known that the earnings report was incorrect. Because Treasury's proposal would not require that this information be disclosed to depositors, that proposal would not enable consumers to check the validity of earnings calculations by savings institutions.

Overall, the Treasury's proposal fails to give the consumer information until the initial deposit is made, and then it requires information be given about all types of savings accounts offered by the institution, rather than the one type of account which the depositor has already opened. The proposal fails to give the consumer such vital information as the annual percentage yield, the periodic percentage rate, and the balance to which it is applied, thus perpetuating the current state of confusion and making it impossible for the consumer to check the validity of earnings calculations.

CRITICISM OF TRUTH IN SAVINGS

Two objections raised to the Truth in Lending Act by Senator McIntyre, *supra*, have been raised in connection with Truth in Savings. The first is the possible adverse effect on small savings institutions.

Informing consumers costs money. Just how much cost is involved in Truth in Savings has yet to be determined. The bill requires that potential depositors be given certain basic information. Requirements for advertisements are also established. Neither of these requirements involve any significant additional expenditure of money on the part of savings institutions. The former can be accomplished by simply expanding the information at the time application is made for new accounts. The study of savings institution advertisements cited above on page six, demonstrated that small advertisements can be just as informative as large ones. Therefore, the latter requirement should entail no additional expense whatsoever.

The only additional expense of any importance might come in the bill's requirements to provide existing depositors with basic information about their accounts. This information can be provided on the forms which are presently sent to all depositors at the end of each year. Computers would have to be re-programmed to supply new information on those forms. Smaller savings institutions, particularly small credit unions, might have difficulty meeting the expense of this requirement. If this proves to be the

case, there is ample provision in the legislation for the Federal Reserve Board to exempt certain classes of savings institutions from any or all of the requirements of Truth in Savings.³¹

During the hearings of the Subcommittee on Consumer Credit, various criticisms of Truth in Savings were voiced by groups representing varying points of view. The American Bankers Association felt that there is already existing statutory authority for accomplishing the objectives of Truth in Savings and charged that S. 1052 represented an "inflexible approach."³² They, too, objected to the periodic percentage rate as "unworkable."

A joint statement by the California Savings and Loan League and the United States Savings and Loan League urged the Federal regulatory agencies to "get together and set up some guidelines or regulations which would eliminate the abuses and misunderstandings" involved in savings deposits.³³ These two organizations also objected to the periodic percentage rate, saying that it would "blow the minds of consumers."³⁴

Further objection came from a representative of Ralph Nader's Public Citizen Litigation group who urged that savings institutions be limited to one method of earnings computation, the day-of-deposit to day-of-withdrawal method.³⁵

While the day-of-deposit to day-of-withdrawal method of earnings computation may be the most advantageous method of computation in most cases, limiting savings institutions to this method has two serious drawbacks. First, it ignores the varied needs of savings institutions, not all of which can offer this method of earnings computation at attractive earnings rates. Second, it ignores the welfare of depositors who can benefit from the higher earnings rates which can be made available under other methods of earnings computation.

The Credit Union National Association noted that credit unions declare their dividends (i.e. earnings) at the end of each period based on net earnings after provision for required reserves. This

31. *Supra*, n. 13, at § 5(a).

32. *Id.* at 420.

33. *Id.* at 465.

34. *Id.* at 466.

35. *Id.* at 108.

provision for dividends is permissive, rather than mandatory, making it difficult—if not impossible—for credit unions to inform their depositors what the dividend rate will be for the coming period.³⁶

This is a valid objection which can be taken care of by a provision which enables credit unions to inform their depositors of the most recent dividend declared.

Finally, the National Association of Mutual Savings Banks declared that it was satisfied that existing Federal and state regulation of savings institutions made further legislation unnecessary.³⁷

CONCLUSION

Amidst the growing awareness that we know so little about the products and services we purchase, there is a need for full disclosure of information about savings accounts. The comments of a Commissioner of the Federal Trade Commission on the need for truth in advertising of products are also applicable to the need for Truth in Savings.

Today the consumer's need for information in order to make the type of meaningful rational choices among products and services offered in the marketplace on which the competitiveness of the marketplace depends, is totally different from what it was even a decade ago. As a result, it can be anticipated that the material facts which must be disclosed in order to ensure that the truthfulness of an advertising message will be far more extensive than what had formerly been regarded as material in a marketplace composed of simpler and less technical products and in which the consumer's purchasing skill and knowledge was not so widely dissimilar from those of his seller as it is today.

The fairness of advertising messages is of crucial importance, both to the need to protect consumers from untruths and also to the role of advertising in promoting the competitiveness of the marketplace. Thus, in the context of today's marketplace, advertisers and regulators must increasingly ask themselves whether advertising is fair, either to consumers or to competitors if an advertising message causes consumers to reach for a particular name brand product in the manner of one of Pavlov's dogs, without thinking about its comparable qualities or its basic ingredients or even of the consumer's need for it? Is it fair for the advertiser to entice a consumer into the marketplace, confront him with a series of products about whose properties he is entirely ignorant and present him with a highly selected set of facts but with no facts at all about the performance of these products when the seller is the only source of the information and the buyer has no practical or ready means to ascertain the facts himself or to even know there are relevant facts he should know?³⁸

36. *Id.* at 492.

37. *Id.* at 495.

38. Address by Mary Gardiner Jones, FTC Commissioner, before the

We need consumer savings disclosure legislation because, without it, consumers will continue to make their savings decisions in ignorance. In an age of consumer rationalism, this is a condition which cannot be permitted to exist.

APPENDIX I

S. 1052

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SHORT TITLE

SECTION 1. This Act may be cited as the "Truth in Savings Act."

FINDINGS AND PURPOSES

SEC. 2. The Congress finds that economic stability would be enhanced and competition among savings institutions would be improved by the full disclosure of the terms and conditions under which earnings on savings deposits is payable. It is the purpose of this Act to require a meaningful disclosure of the terms and conditions of the payment of earnings on individual savings deposits so that the individual will be able to compare the various savings programs available to him.

DEFINITIONS; APPLICABILITY

Sec. 3. (a) For the purpose of this Act—

(1) "Board" means the Board of Governors of the Federal Reserve System;

(2) "individual" means a natural person;

(3) "individual savings deposit" means (a) any deposit or account in a savings institution which consists of funds deposited to the credit of one or more individuals or in which the entire beneficial interest is held by one or more individuals, and upon which earnings are payable, or (b) shares in a savings institution which are issued for the savings of its members and upon which earnings are payable, or (c) any evidence of indebtedness issued by a savings institution to one or more individuals or in which the entire beneficial interest is held by one or more individuals, and upon

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which earnings are payable. Such terms includes regular, notice, and time deposits, and share accounts, whether or not evidenced by an instrument;

(4) "earnings" means any amount accruing to or for the account of any individual savings deposit. Such term includes dividends and interest on any individual savings deposit;

(5) "payable" when used with respect to a certain date or period of time, means the date on which or the period of time after which an absolute right to earnings exists, regardless of whether the earnings are actually paid;

(6) "savings institution" means any person, firm, corporation, association, or organization which in the regular course of business receives and holds or issues individual savings deposits and pays earnings thereon;

(7) any reference to this Act, to any requirement imposed under this Act, or to any provision thereof includes reference to the regulations of the Board under this Act or the provision thereof in question.

(b) Nothing in this Act applies to any transaction involving—

(1) a deposit of funds if the principal purpose of that deposit is to secure or guarantee the performance of a contract or the conditions of a contract for the sale or use of goods, services, or property;

(2) interest payable on premiums, accumulated dividends, or amounts left on deposit under an insurance contract;

(3) any obligation issued by a Federal, State, or local government, or any agency, instrumentality, or authority thereof, except that the Board shall prescribe rules and regulations to require disclosures by any agency, instrumentality, or authority of the Federal Government.

DETERMINATION OF ANNUAL PERCENTAGE RATE, PERIODIC PERCENTAGE RATE, AND ANNUAL PERCENTAGE YIELD

SEC. 4. (a) Periodic percentage rate is the rate applied each period to the principal amount for that period to determine the amount of earnings for that period and may be referred to as the PPR. If the period is less than one day, for purposes of disclosure, the period shall be construed to be either one day or the actual time interval after which earnings are payable, whichever is less, and the rate to be disclosed in lieu of the true periodic percentage rate shall be the factor used to determine the amount of earnings for a one day period.

(b) Annual percentage rate is the periodic percentage rate multiplied by the number of periods in a calendar year of 365 days for all years including leap year, and may be referred to as the APR.

(c) Annual percentage yield is the amount of earnings which accrue in one year to a principal amount of \$100 as the result of the successive applications of the periodic percentage rate at the end of each period to the sum of the principle [sic] amount plus any earnings theretofore credited and not withdrawn during that year, and may be referred to as the APY.

REGULATIONS

SEC. 5. (a) The Board shall prescribe regulations to carry out the purposes of this Act. These regulations shall provide for clear, concise, and uniform disclosures of information required by this Act, and may contain such classifications, adjustments, and exceptions as the Board determines are necessary or proper to effectuate the purposes of this Act. All disclosures required by this Act shall be made only in terms as defined or used in this Act, as defined or used in the Truth in Lending Act or in regulations prescribed under that Act, or as such terms are further defined by the regulations of the Board. The Board may authorize the use of tables or charts for the disclosure of information required by this Act.

(b) The Board may prescribe such other rules and regulations as it determines to be necessary or appropriate to carry out the purposes of this Act.

GENERAL REQUIREMENTS OF DISCLOSURE

SEC. 6. (a) Each savings institution shall make available in writing to any individual upon request, and at the time he initially places funds in an individual savings deposit in such savings institution the following information with respect to individual savings deposits—

- (1) The annual percentage rate;
- (2) the minimum length of time a deposit must remain on deposit so that earnings are payable at that percentage rate;
- (3) the annual percentage yield;
- (4) the periodic percentage rate and the method used to determine the balance to which this rate will be applied;
- (5) the number of times each year earnings are compounded;
- (6) the dates on which earnings are payable;
- (7) any charges initially or periodically made against any deposits;
- (8) any terms or conditions which increase or reduce the rate of earnings payable as disclosed under items (1) or (3); and
- (9) any restrictions and the amount or method of determining the amount of penalties or charges imposed on the use of funds in any deposit.

(b) Each savings institution shall disclose annually and at the time any earnings report is made to an individual in person, or by mailing to his last known address, with respect to his individual savings deposit—

- (1) the amount of earnings paid;
- (2) the annual percentage rate;
- (3) the periodic percentage rate;

(4) the principal balance to which the periodic percentage rate was applied, and the method by which that balance was determined;

(5) any charges made against the account during the period covered for purposes of computing the payment of earnings and making the report; and

(6) any other terms or conditions which increased or reduced the earnings payable under conditions as disclosed under items (1) or (3) of subsection (a).

(c) The Board may, by regulation, authorize or publish tables of periodic factors which reflect compounding, and such other information as it determines to be necessary or appropriate in order to facilitate the individual's ability to verify the computation of earnings payable on any individual savings deposit.

(d) Not less than ten days before a savings institution adopts any change with respect to any item of information required to be disclosed under this section, that institution shall notify each individual depositor of each such change, unless such change is directed by regulatory authority.

DISCLOSURES IN ADVERTISING

SEC. 7. (a) Every advertisement relating to the earnings payable on an individual savings deposit shall state in print of equal prominence the annual percentage rate and the annual percentage yield. If that rate is payable only on a deposit which meets certain minimum time or amount requirements, those requirements shall be clearly and conspicuously stated.

(b) No such solicitation shall—

(1) include any indication of any percentage rate or percentage yield based on a period in excess of one year or on the effect of any grace period; or

(2) make use of the term "profit" in referring to earnings payable on such deposits.

ADMINISTRATIVE ENFORCEMENT

SEC. 8. (a) Compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) by the Board of Directors of the Federal Deposit Insurance Corporation; Administration with respect to any insured Credit Union.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under

that Act. In addition to its powers under any provision of the law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this Act is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this Act shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this Act, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(d) The authority of the Board to issue regulations under this Act does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this Act.

CIVIL LIABILITY

SEC. 9. (a) Except as otherwise provided in this section, any savings institution which fails in connection with any transaction subject to this Act to disclose to any individual any information required under this Act to be disclosed to that individual is liable to that individual for the damage sustained which—

(1) shall not be less than \$100 nor greater than \$1,000; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

(b) An institution has no liability under this section if within fifteen days after discovering an error, or upon receipt of written notice of an error and prior to the bringing of an action under this section the institution notifies the individual concerned of the error and makes whatever adjustments are appropriate and necessary.

(c) An institution may not be held liable in any action brought under this section for a violation of this Act if the institution shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

CRIMINAL LIABILITY FOR WILLFUL AND KNOWING VIOLATION

SEC. 10. Whoever willfully and knowingly (1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this Act, or (2) otherwise fails to comply with any requirement imposed under this Act shall be fined not more than \$5,000..

VIEWS OF OTHER AGENCIES

SEC. 11. In the exercise of its functions under this Act, the Board may obtain upon request the views of any other Federal or State agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of savings institutions subject to this Act.

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union.

EFFECT ON OTHER LAWS

SEC. 12. (a) This Act does not annul, alter, or affect, or exempt any savings institution from complying with the laws of any State relating to the disclosure of information in connection with individual savings deposits, except to the extent that those laws are inconsistent with the provisions of this Act or regulations promulgated under this Act, and then only to the extent of the inconsistency.

(b) This Act does not otherwise annul, alter, or effect in any manner the meaning, scope, or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of earnings; or any element or elements of earnings, permissible under such laws in connection with individual savings deposits, nor does the Act extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.

(c) Except as specified in section 10, this Act and the regulations promulgated under this Act do not affect the validity or enforceability of any contract or obligation under State or Federal law.

REPORT TO CONGRESS

SEC. 13. The Board shall report to the Congress each year concerning the administration of its functions under this Act, and

shall include in its report an assessment of the extent to which compliance with the requirements under this Act is being achieved and such recommendations as it deems necessary or appropriate.

SEPARABILITY

SEC. 14. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid not be affected thereby.